

proposed depreciation, is also appropriate for use in the high-cost support mechanism.⁹⁶²

2. Discussion

a. Method of Depreciation

422. For the reasons explained below, we adopt a straight-line equal-life-group method of depreciation. Further, we select curve shapes to be used to distribute equal-life groups in each plant account.⁹⁶³

423. Most commenters support our tentative conclusion to use the straight-line equal-life-group method of depreciation.⁹⁶⁴ Ameritech argues, however, that the Commission's adoption of a straight-line depreciation method in other contexts need not limit us to that method for use in this model, and that "the method of depreciation for a specific study area needs to be consistent with any study that underlie [sic] the development of economic lives or net salvage."⁹⁶⁵ Although Ameritech may correctly assert that there is no requirement that we adopt a method of depreciation simply because it is the method previously adopted by the Commission in another context, we believe that the Commission's adoption, in other proceedings, of the straight-line equal-life-group method reflects the well-considered conclusion that this method of depreciation is best-suited to determining the

⁹⁶² 47 C.F.R. § 32.2000(g). The equal-life-group procedure subdivides all units of a plant account installed in a particular year (a "vintage") into groups in which all units are expected to have the same life span. Each group is depreciated using the straight-line method, which spreads depreciation costs equally over the life of the group. See *Amendment of Part 31 (Uniform System of Accounts for Class A and B Companies) so as to Permit Depreciable Property to be Placed in Groups Comprised of Units with Expected Equal Life for Depreciation Under the Straight-Line Method*, Report and Order, 83 FCC2d 267 (1980), recon., 87 FCC2d 916 (1981), supplemental opinion, 87 FCC2d 1112 (1981) [*Straight-Line Equal-Life-Group Report and Order*]. Thus, the annual depreciation of a single vintage of a plant account equals the sum of the depreciation amounts of all surviving life-groups from that vintage. For a discussion of the equal-life-group method of depreciation, see Bryan Clopton, "Equal Life Group Depreciation Rates", in National Ass'n of Regulatory Utility Commissioners, *Public Utility Depreciation Practices* at 165-186 (August 1996) [*Public Utility Depreciation Practices*].

⁹⁶³ A curve shape is the result of actuarial analysis which determines the probable frequency of plant mortality for a particular plant account from the time the plant vintage is placed in service to the end of life of the final surviving plant of that vintage. In the equal-life-group methodology, curve shapes are used to determine the number of units of a plant account in each equal-life group. See generally *Public Utility Depreciation Practices* at 111-129. The adopted curve shapes for each plant account are shown in the table attached in Appendix A at A-30.

⁹⁶⁴ See *AT&T/MCI Inputs Further Notice* comments at 47-48; *BellSouth Inputs Further Notice* comments, Appendix B at B-26; *GTE Inputs Further Notice* comments at 85; *Sprint Inputs Further Notice* comments at 75; *AT&T/MCI Inputs Further Notice* reply comments at 41.

⁹⁶⁵ *Ameritech Inputs Further Notice* comments at 30.

economic costs of providing local service. The straight-line equal-life-group depreciation method is also consistent with our method of developing economic lives and net salvage for the same plant accounts. Because the Commission consistently uses a straight-line equal-life-group depreciation method in all other Commission-proposed depreciation, and in light of the general support received in favor of straight-line equal-life-group depreciation, we conclude that straight-line equal-life-group depreciation is appropriate for use in the high-cost support mechanism.⁹⁶⁶

424. In using the straight-line equal-life-group method of depreciation in other contexts, the Commission has acknowledged that the method necessarily requires the selection of a curve shape for the distribution of the equal-life groups.⁹⁶⁷ The HAI model assumed a single curve shape for all plant accounts.⁹⁶⁸ Because the curve shapes are not easily averaged across all categories, however, we believe that use of the single HAI curve shape will unduly distort the model input values. We, therefore, determine that separate curve shapes should be adopted for each plant account category. Actuaries have developed generic, standardized curve shapes, called Gompertz-Makeham (GM) standard curves, that describe generalized mortality patterns. GM standard curve shapes are recognizable to many knowledgeable parties concerned with depreciation methods and are normally more immediately meaningful to them than nonstandard curve shapes, which are identified by the values for three variables.⁹⁶⁹ For convenience purposes, GM standard curves are often substituted for nonstandard curves. USTA has developed nonstandard curve shapes for most plant accounts based on mortality data provided by its members, using the same methodology approved in other Commission proceedings.⁹⁷⁰ For the remaining plant accounts, the Commission has developed composite curves, also nonstandard, utilizing data from available depreciation studies. Because the GM

⁹⁶⁶ We note, furthermore, in response to the comments of AT&T/MCI, that we intend to follow our standard practice of accounting for the impact of deferred taxes. *See, e.g.*, 47 C.F.R. § 65.830(a)(1).

⁹⁶⁷ *See, e.g., Straight-Line Equal-Life-Group Report and Order.*

⁹⁶⁸ Letter from Chris Frentrup, MCI WorldCom, to Magalie Roman Salas, FCC, dated July 16, 1999 (AT&T/MCI July 15 *ex parte*).

⁹⁶⁹ The variables describing a nonstandard curve shape are not usually meaningful in and of themselves. There are an infinite number of curves that the variables could describe and the variables themselves offer no insight into the shape of the curve until they have been used to actually plot the curve they describe. Until that has been done the depreciation consequences of a particular set of variables are unknown. The GM standard curves are a set of thirteen generalized curves that may stand in place of the infinite number of possible nonstandard curves. Because of the small, finite number of GM standard curves, a person familiar with depreciation practices will recognize the depreciation consequences of a particular identified GM standard curve. For a detailed discussion of GM standard curves, formerly known as Bell standard curves, see American Telegraph & Telephone, *Engineering Economy* 345-65 (1977).

⁹⁷⁰ *See Public Utility Depreciation Practices* at 120-26.

standard curves are recognizable and convenient to parties interpreting the data inputs in the high-cost model, and because the standardized curves will not vary significantly from the nonstandardized curves, we conclude that GM standard curves will be more useful in the high-cost inputs model than nonstandard curves. For each plant category, therefore, we adopt the GM standard curve shape nearest that developed by USTA or the Commission.⁹⁷¹

b. Depreciation Lives and Future Net Salvage Percentages

425. We adopt the tentative conclusion of the *Inputs Further Notice* that we should use HAI's input values with respect to depreciation lives and future net salvage percentages. As explained below, we reject the objections by some commenters that the HAI input values are not appropriate for determining depreciation rates in a competitive environment.

426. In estimating depreciation expenses, the model uses the projected lives and future net salvage percentages for the asset accounts in Part 32 of the Commission's rules.⁹⁷² Traditionally, the projected lives and future net salvage values used in setting a carrier's rates have been determined in a triennial review process involving the state commission, the Commission, and the carrier. In order to simplify this process, the Commission has prescribed ranges of acceptable values for projected lives and future net salvage percentages.⁹⁷³ The Commission's prescribed ranges reflect the weighted average asset life for regulated telecommunications providers. These ranges are treated as safe harbors, such that carriers that incorporate values within the ranges into their depreciation filings will not be challenged by the Commission. Carriers that submit life and salvage values outside of the prescribed range must justify their submissions with additional documentation and support.⁹⁷⁴ Commission-authorized depreciation lives are not only estimates of the physical lives of assets, but also reflect the impact of technological obsolescence and forecasts of equipment replacement. We believe that this process of combining statistical analysis of historical information with forecasts of equipment replacement generates forward-looking projected lives that are reasonable estimates of economic lives and, therefore, are appropriate measures of

⁹⁷¹ See Public Utility Depreciation Practices at 123-25 for a discussion regarding the method for matching generalized curves to observed life table values. The adopted curve shapes for each plant account category are shown in the table attached in Appendix A at A-30..

⁹⁷² See 47 C.F.R. § 32.2000(j)

⁹⁷³ See 47 C.F.R. § 32.2000(g)(iii).

⁹⁷⁴ The Commission has proposed streamlining the depreciation prescription process by, *inter alia*, expanding the prescribed range for the digital switching plant account and eliminating salvage from the depreciation process. See *1998 Biennial Regulatory Review – Review of Depreciation Requirements for Incumbent Local Exchange Carriers*, Notice of Proposed Rulemaking, CC Docket No. 98-137, 13 FCC Rcd 20542 (1998).

depreciation.

427. We disagree with comments by incumbent LECs that the Commission's prescribed ranges are not appropriate for determining depreciation rates in a competitive environment.⁹⁷⁵ These parties argue that rapid changes in technology and competition in local telecommunications markets will diminish asset lives significantly below the Commission's prescribed range by causing existing equipment to become obsolete more quickly.⁹⁷⁶ We agree with GSA, AT&T and MCI that there is no evidence to support the claim that increased competition or advances in technology require the use of shorter depreciation lives in the model than are currently prescribed by the Commission.⁹⁷⁷ The Commission's prescribed lives are not based solely on the engineered life of an asset, but also consider the impacts of technological change and obsolescence. We note that the depreciation values we adopt are generally at the lower end of the prescribed range. We also find compelling the data presented in GSA's comments showing that, although the average depreciation rate for an incumbent LEC's Total Plant in Service is approximately seven percent, incumbent LECs are retiring plant at a four percent rate.⁹⁷⁸ This difference has allowed depreciation reserves to increase so that the depreciation reserve-ratio is currently greater than 50 percent.⁹⁷⁹ We conclude that the existence of this difference implies that the prescribed lives are shorter than the engineered lives of these assets. In addition, this difference provides a buffer against technological change and competitive risk for the immediate future. We, therefore, conclude that the Commission's prescribed ranges are appropriate to determine depreciation rates for use in the federal high-cost mechanism.

428. We also decline to adopt the values for projected lives and net salvage

⁹⁷⁵ Ameritech *Inputs Further Notice* comments at 31-32; Bell Atlantic *Inputs Further Notice* comments at 7, 23-24, and Attachment B, at 7-10; BellSouth *Inputs Further Notice* comments, Appendix B at B-23-B-26; Cincinnati Bell Telephone *Inputs Further Notice* comments at 5; GTE *Inputs Further Notice* comments at 85-86; SBC *Inputs Further Notice* comments at 21-23; Sprint *Inputs Further Notice* comments at 76-79; *see also* Aliant June 1, 1998 comments at 3-4; Ameritech June 1, 1998 comments at 4; BCPM June 1, 1998 comments at 11-13; GTE June 1, 1998 comments at 15-16; Southwestern June 1, 1998 comments at 9-10.

⁹⁷⁶ Ameritech *Inputs Further Notice* comments at 31-32; Bell Atlantic *Inputs Further Notice* comments at 7, 23-24, and Attachment B, at 7-10; BellSouth *Inputs Further Notice* comments, Appendix B at B-24-B-26; GTE *Inputs Further Notice* comments at 85-86; Sprint *Inputs Further Notice* comments at 76-79; *see also* BCPM June 1, 1998 comments at 12; SBC June 1, 1998 comments at 17; GTE June 1, 1998 comments at 16; Ameritech June 1, 1998 comments at 4.

⁹⁷⁷ AT&T/MCI *Inputs Further Notice* comments at 47-48; GSA *Inputs Further Notice* comments at 5-6, Attachment 1; *see also* HAI June 1, 1998 comments at 13.

⁹⁷⁸ GSA *Inputs Further Notice* comments at 5-6, Attachment 1.

⁹⁷⁹ *Id.*

percentages submitted by several incumbent LEC commenters. These commenters propose adoption of default values for projected lives and salvage based LEC industry data surveys⁹⁸⁰ or on similar values currently used by LECs for financial reporting purposes.⁹⁸¹ The LEC industry data survey's projected lives generally fall outside of the Commission's prescribed ranges.⁹⁸² This is significant because the values that fall outside of the prescribed ranges represent accounts that reflect the overwhelming majority of plant investment, thus potentially triggering a dramatic distortion of the estimated cost of providing the supported services. Moreover, these commenters assert that technological advances and competition will have the effect of displacing current technologies, but offer no specific evidence that this displacement will occur at greater rates than the forward-looking Commission-authorized depreciation lives take into account. The record is particularly silent regarding the displacement of technologies associated with the provision of services supported by the federal high-cost mechanism. We do not believe that the LEC industry data survey's projected lives have been adequately supported by the record in this proceeding to justify their adoption.

429. We also agree with GSA's comments that the projected-life values currently used by LECs for financial reporting purposes are inappropriate for use in the model.⁹⁸³ In addition, the commenters proposing these values have not explained why the values used for financial reporting purposes would also reflect economic depreciation. The depreciation values used in the LECs' financial reporting are intended to protect investors by preferring a conservative understatement of net assets, partially achieving this goal by erring on the side of over-depreciation. These preferences are not compatible with the accurate estimation of the cost of providing services that are supported by the federal high-cost mechanism. We, therefore, decline to adopt the projected life values used by LECs for financial reporting purposes.

430. In the 1997 *Further Notice*, the Commission tentatively concluded that it should adopt depreciation expenses that reflect a weighted average of the rates authorized for

⁹⁸⁰ See, e.g., *Ameritech Inputs Further Notice* comments at 31-32 (recommending adoption of values endorsed by Technology Futures, Inc.).

⁹⁸¹ See, e.g., *Bell Atlantic Inputs Further Notice* comments at 24; *GTE Inputs Further Notice* comments at 86; *SBC Inputs Further Notice* comments at 22-23.

⁹⁸² The eight categories in which BCPM's values fall outside required ranges for projected lives were: Digital Circuit Equipment; Digital Switching; Aerial Cable-Metallic; Aerial Cable-Non-Metallic; Underground Cable-Metallic; Underground Cable-Non-Metallic; Buried Cable-Metallic; and Buried Cable-Non-Metallic. The two categories in which BCPM's values fall outside required ranges for net salvage percentage were Digital Circuit Equipment and Poles.

⁹⁸³ *GSA Inputs Further Notice* reply comments at 5.

carriers that are required to submit their rates to us.⁹⁸⁴ The values submitted by the HAI sponsors essentially reflect such a weighted average. The HAI values represent the weighted average depreciation lives and net salvage percentages from 76 study areas.⁹⁸⁵ According to the HAI sponsors, these depreciation lives and salvage values reflect the experience of the incumbent LEC in each of these study areas in retiring plant and its projected plans for future retirements.⁹⁸⁶

431. In the *Inputs Further Notice*, we tentatively concluded that HAI's values represent the best forward-looking estimates of depreciation lives and net salvage percentages.⁹⁸⁷ Generally, these values fall within the ranges prescribed by the Commission for projected lives and net salvage percentages. Although the HAI values for four account categories fall outside of the Commission's prescribed ranges,⁹⁸⁸ these values still reflect the weighted average of projected lives and net salvage percentages that were approved by the Commission and, therefore, are consistent with the approach proposed in the *1997 Further Notice*. As noted above, the fact that an approved value falls outside of the prescribed range simply means that the carrier proposing the value was required to provide additional justification to the Commission for this value. We are satisfied that HAI calculated its proposed rates using the proper underlying depreciation factors and that HAI's documentation supports the selection of these values. We, therefore, adopt HAI's values for estimating the depreciation lives and net salvage percentages.

B. Cost of Capital

432. We now adopt the conclusions that we tentatively reached in the *Inputs Further Notice* regarding the cost of capital. For the reasons discussed below, we do not find that any commenter has provided a compelling argument for altering the current federal rate of return of 11.25 percent, absent the adoption of a different rate of return by the Commission in a rate prescription order.

⁹⁸⁴ *1997 Further Notice*, 12 FCC Rcd at 18571, para. 152.

⁹⁸⁵ HAI June 1, 1998 comments at 10.

⁹⁸⁶ *Id.*

⁹⁸⁷ The proposed values for these inputs are listed in Appendix A.

⁹⁸⁸ HAI's lives and salvage values fall within the Commission's prescribed ranges with the exception of values for four accounts: Digital Circuit Equipment; Garage Work Equipment; Operator Systems; and Poles.

433. The cost of capital represents the annual percentage rate of return⁹⁸⁹ that a company's debt-holders and equity holders require as compensation for providing the debt and equity capital that a company uses to finance its assets.⁹⁹⁰ In the *Universal Service Order*, the Commission concluded that the current federal rate of return of 11.25 percent is a reasonable rate of return by which to determine forward-looking costs.⁹⁹¹

434. GSA, AT&T and MCI comment that the cost of capital for incumbent LECs is well below 11.25 percent.⁹⁹² Bell Atlantic advocates a cost of capital rate in the range of 12.75 to 13.15 percent.⁹⁹³ GTE and USTA dispute the lower cost of capital asserted by AT&T and MCI and GSA.⁹⁹⁴ All commenters addressing this issue agreed that, if a different rate of return is adopted in a rate prescription order, that value should be adopted in the model.⁹⁹⁵

435. We find that the commenters proposing an adjustment to the cost of capital have failed to make an adequate showing to justify rates that differ from the current 11.25 percent federal rate of return. We conclude, therefore, that the current rate is reasonable for determining the cost of providing services supported by the federal high-cost mechanism. If the Commission, in a rate prescription order, adopts a different rate of return, we conclude the federal mechanism should use the more recently determined rate of return.

⁹⁸⁹ Rate of return is the percentage which a telephone carrier is authorized to earn on its rate base. For example, if the rate of return is 11.25% and the rate base is \$1 million, the carrier is authorized to earn \$112,500.

⁹⁹⁰ See *Local Exchange Carriers' Rates, Terms, and Conditions for Expanded Interconnection Through Physical Collocation for Special Access and Switched Transport*, Second Report and Order, CC Docket No. 93-316212, FCC Rcd 18370, 18765 (1997).

⁹⁹¹ *Universal Service Order*, 12 FCC Rcd at 8913, para. 250.

⁹⁹² AT&T/MCI *Inputs Further Notice* comments at 50-51 (arguing that forward-looking cost of capital is approximately 8.5-9.0 percent, but endorsing HAI value of 10.01 percent); GSA *Inputs Further Notice* comments at 6-7 (noting that GSA had recommended 9.5 percent in rate of return proceeding); AT&T/MCI *Inputs Further Notice* reply comments at 41 (arguing that true forward-looking cost of capital is 8.64 percent); see also HAI June 1, 1998 comments at 13.

⁹⁹³ Bell Atlantic *Inputs Further Notice* comments at 23.

⁹⁹⁴ USTA *Inputs Further Notice* reply comments at 3-4; GTE *Inputs Further Notice* reply comments at 34-35; see also BCPM Dec. 11 submission (advocating an 11.36 percent cost of capital).

⁹⁹⁵ See, e.g., Ameritech *Inputs Further Notice* comments at 33-34; AT&T/MCI *Inputs Further Notice* comments at 50-51 (but advocating adoption of different rate for model if rate prescription proceeding will not be concluded prior to January 1, 2000 implementation of model); GSA *Inputs Further Notice* comments at 6-7; USTA reply comments at 3.

C. Annual Charge Factors

436. We also now adopt our tentative conclusion in the *Inputs Further Notice* to use HAI's annual charge factor methodology. As explained below, we find this appropriate because the synthesis model uses a modified version of HAI's expense module.

437. Incumbent LECs develop cost factors, called "annual charge factors," to determine the dollar amount of recurring costs associated with acquiring and using particular pieces of investment for a period of one year. Incumbent LECs develop these annual charge factors for each category of investment required. The annual charge factor is the sum of depreciation, cost of capital, adjustments to include taxes on equity, and maintenance costs.

438. To develop annual charge factors, the BCPM proponents proposed a model with user-adjustable inputs to calculate the depreciation and cost of capital rates for each account.⁹⁹⁶ The BCPM proponents stated that this account-by-account process was designed to recognize that all of the major accounts have, among other things, differing economic lives and salvage values that lead to distinct capital costs.⁹⁹⁷ HAI's model is also user adjustable and reflects the sum for the three inputs: depreciation, cost of capital, and maintenance costs.⁹⁹⁸ In the *Inputs Further Notice*, the Commission tentatively adopted HAI's annual charge factor methodology, and invited comment on this tentative decision.⁹⁹⁹ GTE argues that the annual charge factors should be company specific, in order to make the cost calculations in the optimization phase and the expense module comparable.¹⁰⁰⁰ We do not believe it would be appropriate to adopt GTE's proposal of using company-specific annual charges, because we are adopting nationwide averages for all other inputs, including those that make up the annual charge. Adopting company-specific annual charges would therefore result in likely inconsistencies between various related inputs and in the model as a whole. AT&T and MCI support the use of the HAI annual charge factor methodology.¹⁰⁰¹

⁹⁹⁶ BCPM Dec. 11 submission at 80.

⁹⁹⁷ *Id.* BCPM's model includes all of the methodologies that are in practice today, including: Deferred taxes; Mid-year, Beginning Year, and End Year placing conventions; Gompertz-Makeham Survival Curves; Future Net Salvage Values; Equal Life Group Methods; and others. The model also incorporates separate Cost of Debt and Equity rates, along with the Debt to Equity ratio. *Id.*

⁹⁹⁸ HAI Dec. 11 submission at 41.

⁹⁹⁹ *Inputs Further Notice* at para. 242.

¹⁰⁰⁰ GTE *Inputs Further Notice* comments at 87.

¹⁰⁰¹ AT&T/MCI *Inputs Further Notice* comments at 51.

439. Because the synthesis model uses HAI's expense module, with modifications, we adopt HAI's annual charge factor methodology, utilizing the capital cost and expense inputs adopted above.¹⁰⁰² We believe that HAI's annual charge factor methodology is consistent with other inputs used in the model adopted by the Commission, and is, therefore, easier to implement and yields more reasonable results.

IX. PROPOSED MODIFICATION TO PROCEDURES FOR DISTINGUISHING RURAL AND NON-RURAL COMPANIES

A. Background

440. In the *Universal Service Order*, the Commission determined that rural and non-rural carriers will receive federal universal service support determined by separate mechanisms until at least January 1, 2001.¹⁰⁰³ The Commission stated that it would define rural carriers as those carriers that meet the statutory definition of a rural telephone company in section 153(37) of the Communications Act.¹⁰⁰⁴ Under this definition, a "local exchange carrier operating entity" is deemed a "rural telephone company" to the extent that such entity--

(A) provides common carrier service to any local exchange carrier study area that does not include either--

(i) any incorporated place of 10,000 inhabitants or more, or any part thereof, based on the most recently available population statistics of the Bureau of the Census; or

(ii) any territory, incorporated or unincorporated, included in an urbanized area, as defined by the Bureau of the Census as of August 10, 1993;

(B) provides telephone exchange service, including exchange access, to fewer than 50,000 access lines;

(C) provides telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines; or

(D) has less than 15 percent of its access lines in communities of more than 50,000 on the date of enactment of the Telecommunications Act of 1996.

441. In addition, the Commission determined that LECs should self-certify their

¹⁰⁰² The expense module contains the expense values including plant-specific maintenance ratios and the algorithms that determine monthly cost per-line, given the results of all other modules.

¹⁰⁰³ *Universal Service Order*, 12 FCC Rcd at 8927, para. 273.

¹⁰⁰⁴ See 47 U.S.C. § 153(37); *Universal Service Order*, 12 FCC Rcd at 8944, para. 310.

status as a rural company each year to the Commission and their state commission.¹⁰⁰⁵ On September 23, 1997, the Bureau released a Public Notice requiring carriers seeking to be classified as rural telephone companies to file a letter with the Commission by April 30 of each year certifying that they meet the statutory definition.¹⁰⁰⁶ The *Self-Certification Public Notice* requires a LEC certifying as a rural carrier to explain how it meets at least one of the four criteria set forth in the statutory definition.¹⁰⁰⁷ On June 22, 1998, the Accounting Policy Division (Division) released a Public Notice with a list of the approximately 1,400 carriers that had certified as rural carriers as of April 30, 1998.¹⁰⁰⁸ On March 16, 1999, the Bureau released a Public Notice revising the annual deadline for LECs seeking to be classified as rural carriers to July 1 of each year. In the *Inputs Further Notice*, the Commission extended the July 1, 1999, recertification filing deadline to October 15, 1999.¹⁰⁰⁹ On September 27, 1999, the Division released a Public Notice further extending the deadline to December 1, 1999, in consideration of the possibility that certain carriers might not be required to file the certification letter in light of the action we take in this Order.¹⁰¹⁰

442. Because a vast majority of the carriers certifying as rural telephone companies serve fewer than 100,000 access lines, we tentatively concluded in the *Inputs Further Notice* that we should adopt new filing requirements for carriers filing rural self-certification letters.¹⁰¹¹ We proposed that carriers who serve fewer than 100,000 access lines should not have to file the annual rural certification letter unless their status has changed since their last filing.¹⁰¹² We also sought comment on certain terms relevant to the definition of a rural

¹⁰⁰⁵ *Universal Service Order*, 12 FCC Rcd at 8943-44, para. 310.

¹⁰⁰⁶ Self-Certification as a Rural Telephone Company, *Public Notice*, CC Docket No. 96-45, DA 97-1748 (rel. Sept. 23, 1997) (*Self-Certification Public Notice*).

¹⁰⁰⁷ See 47 U.S.C. § 153(37).

¹⁰⁰⁸ Commission Acknowledges Receipt of Letters Self-Certifying LECs as Rural Telephone Companies, *Public Notice*, CC Docket No. 96-45, DA 98-1205 (rel. June 22, 1998).

¹⁰⁰⁹ *Inputs Further Notice* at para. 255.

¹⁰¹⁰ *Common Carrier Bureau Extends Rural Carrier Recertification Filing Deadline*, *Public Notice*, CC Docket No. 96-45, DA 99-1948 (rel. September 27, 1999).

¹⁰¹¹ *Inputs Further Notice* at para. 246.

¹⁰¹² *Id.* The National Exchange Carrier Association, Inc. (NECA) has requested that the Commission eliminate the annual rural certification process. NECA states that the majority of carriers that meet the rural definition are small LECs with limited resources, whose status is not likely to change. Letter from Richard A. Askoff, NECA to Irene Flannery, FCC, dated April 9, 1999.

telephone company in section 153(37) of the Act.¹⁰¹³ In addition, we sought comment on whether the Commission should reconsider its use of section 153(37) to distinguish rural telephone companies from non-rural telephone companies.¹⁰¹⁴

B. Discussion

443. Consistent with our tentative conclusion in the *Inputs Further Notice*, we eliminate the annual filing requirements for carriers serving fewer than 100,000 access lines that have self-certified as rural, unless changes occur in their status as rural carriers. In addition, we will require carriers serving study areas with more than 100,000 access lines to file rural self-certifications that are consistent with the statutory interpretation discussed below. Thereafter, such carriers also will be required to file only in the event of a change in their status.

444. As discussed below, we interpret "local exchange operating company" in section 153(37) of the Act to refer to the legal entity that provides local exchange service. In addition, we interpret "communities of more than 50,000" in that section to refer to legally incorporated localities, consolidated cities, and census-designated places with populations of more than 50,000 according to Census Bureau statistics.

445. With respect to our request for comment on whether we should reconsider our use of section 153(37) to distinguish rural telephone companies from non-rural companies, we conclude below that we should not use an alternative definition of rural telephone company to determine which companies are subject to the rural or non-rural high-cost support mechanisms.

446. Because of settled expectations in this ongoing proceeding, the Commission will accept a carrier's current rural self-certification for purposes of calculating support based on that status for calendar year 2000. We will require carriers serving study areas with more than 100,000 access lines to certify their rural status by July 1, 2000, for purposes of receiving support beginning January 1, 2001.

1. Annual Filing Requirement

447. Carriers serving study areas with fewer than 100,000 access lines. We adopt the proposed change in the annual self-certification requirement for rural carriers and will require that carriers serving fewer than 100,000 access lines file a rural self-certification letter only if their status has changed since their last filing. All commenters addressing this issue

¹⁰¹³ *Inputs Further Notice* at paras. 251-53.

¹⁰¹⁴ *Id.* at para. 254.

urge the Commission to eliminate annual filing requirements.¹⁰¹⁵ We believe that this is a better approach because the overwhelming majority of the companies that filed rural certification letters qualified as rural telephone companies under the 50,000- or 100,000-line thresholds identified in the statute. Access line counts can be verified easily with publicly available data. Further, this relaxation in filing requirements will lessen the burden on rural carriers. We estimate that this change will eliminate the filing requirement for approximately 1,380 of the carriers that filed in 1998, many of which are small businesses on which even limited regulatory requirements may be unduly burdensome. We, therefore, conclude that carriers serving study areas with fewer than 100,000 access lines that already have certified their rural status need not re-certify for purposes of receiving support beginning January 1, 2000, and need only file thereafter if their status changes. As explained below, we must determine the status for carriers serving study areas with more than 100,000 access lines.

448. We believe, as GTE suggests, that carriers generally (although not uniformly) have filed for rural status in this proceeding on a study area basis. Indeed, the synthesis model that has been posted on the Commission's Web site -- allowing carriers to determine how the Commission has been treating them throughout this proceeding -- estimates cost on a study area basis.¹⁰¹⁶ Not all carriers, however, have uniformly filed for rural status on a study area basis, as we noted in the *Inputs Further Notice*, resulting in inconsistencies that must be resolved in order to assure equitable treatment of all carriers. These inconsistencies will be addressed below.

449. Carriers serving study areas with more than 100,000 access lines. For purposes of calculating high cost support using the model for the year 2000, we will continue to treat carriers as rural if they have previously self-certified as rural carriers. We will then require rural carriers serving study areas with more than 100,000 access lines to file certification

¹⁰¹⁵ ALLTEL *Further Inputs Notice* comments at 2; Alaska Telephone Association *Further Inputs Notice* comments at 2; Bentleyville Telephone Company *Further Inputs Notice* comments at 1; CenturyTel *Further Inputs Notice* comments at 7; Citizens Utilities *Further Inputs Notice* comments at 6; GTE *Further Inputs Notice* comments at 91; GVNW Consulting (GVNW) *Further Inputs Notice* comments at 2; Matanuska Telephone Association (MTA) *Further Inputs Notice* comments at 1; NECA *Further Inputs Notice* comments at 2; Rural Telephone Coalition (RTC) *Further Inputs Notice* comments at 8; Skyline Telephone Membership Corporation *Further Inputs Notice* comments at 1, 3; South Slope Cooperative Telephone Company *Further Inputs Notice* comments at 1-2; TXU Communications Telephone Company (TXU) *Further Inputs Notice* comments at 6; USTA *Further Inputs Notice* comments at 6; Virgin Islands Telephone Corporation (Vitelco) *Further Inputs Notice* comments at 7; Yukon Telephone Company *Further Inputs Notice* comments at 1.

¹⁰¹⁶ The model also estimates cost on a wire center basis. Also, we note that PRTC and Anchorage Telephone Utility previously had been excluded from the non-rural model runs because of the unavailability of data for Puerto Rico and Alaska, but those companies have participated in the proceeding on the presumption that were non-rural. The formerly unavailable data is now available, and has been incorporated into the model posted on the Commission's web site. See Letter from Charles A. White, PNR, to Magalie Roman Salas, FCC, dated July 29, 1999 (PNR July 29 *ex parte*).

letters by July 1, 2000, for their year 2001 status. Commenters that address the issue broadly support re-certification requirements that require these carriers to re-certify only if their status has changed, rather than require them to re-certify each year.¹⁰¹⁷ Finding that the relaxed re-certification requirements will reduce administrative burdens for carriers subject to rural certification and for the Commission, we conclude that certified rural carriers with more than 100,000 access lines need only re-certify their status if it changes. Therefore, in 2001 and subsequent years, a carrier serving study areas with more than 100,000 access lines and claiming rural status will be required to file only if its status changes.

2. Statutory Terms

450. As noted in the *Inputs Further Notice*, carriers' line counts are readily available to the Commission, but information about service territories and communities served are not. As a result, the Commission can easily determine whether a carrier satisfies criteria (B) or (C) of the rural telephone company definition,¹⁰¹⁸ because these criteria are based on information that can be verified easily with publicly available data -- the number of access lines served by a carrier. In contrast, criteria (A) and (D) require additional information and analysis to verify a carrier's self-certification as a rural company.¹⁰¹⁹ Specifically, under criterion (A), a carrier is rural if its study area does not include "any incorporated place of 10,000 inhabitants or more" or "any territory . . . in an urbanized area," based upon Census Bureau statistics and definitions.¹⁰²⁰ Under criterion (D), a carrier is rural if it had "less than 15 percent of its access lines in communities of more than 50,000 on the date of enactment of the [1996 Act]." ¹⁰²¹

451. We conclude that criterion (A), by referencing Census Bureau sources, can be applied consistently without further interpretation by the Commission. We will require, however, that carriers self-certifying as rural telephone companies pursuant to criterion (A) include with their self-certification letter a description of the study areas in which they

¹⁰¹⁷ See, e.g., ALLTEL *Inputs Further Notice* comments at 2; CenturyTel *Inputs Further Notice* comments at 7; GVNW *Inputs Further Notice Comments* at 2; MTA *Inputs Further Notice Comments* at 1; NECA *Inputs Further Notice* comments at 2; TXU *Inputs Further Notice* comments at 6; USTA *Inputs Further Notice* comments at 6; TXU *Inputs Further Notice* reply comments at 4.

¹⁰¹⁸ 47 U.S.C. § 153(37)(B), (C).

¹⁰¹⁹ Most carriers asserting rural status under criteria (A) or (D) also claim rural status under the access line thresholds in criteria (B) or (C). In those cases, the Commission does not need additional information to verify the carrier's rural status.

¹⁰²⁰ 47 U.S.C. § 153(37)(A).

¹⁰²¹ 47 U.S.C. § 153(37)(D).

provide service and the basis for their assertion that they meet the requirements of criterion (A).

452. In the *Inputs Further Notice*, we sought comment on the meaning of the term "local exchange operating entity." Commenters have offered three different interpretations of this term. Many commenters suggest that we should interpret the term as applying at the study area level.¹⁰²² Although in most cases an operating entity will provide service to only one study area within a state, that is not always the case. As a result, the study area approach could mean classifying a carrier at an organizational level smaller than the actual legal entity responsible for the provision of the local exchange services (e.g., a "division" of a company). In contrast, AT&T and MCI argue that the term should mean the holding company within a state whose affiliates provide the local exchange services.¹⁰²³ The third interpretation has been proposed by RTC and Citizens Utilities, who argue that the most natural understanding of "local exchange operating entity" is the legal entity responsible for the provision of local exchange services, regardless of whether that entity serves a single or multiple study areas.¹⁰²⁴ We conclude that this interpretation is the most reasonable one.

453. We believe that it is most logical to classify the carrier at the actual corporate level through which it offers its local exchange services. As RTC and Citizens Utilities point out, it is that entity that has legal responsibility for the provision of the local exchange services.¹⁰²⁵ The holding company interpretation proposed by MCI and AT&T seems to rest upon the concern that study area designations will be manipulated and, as a result, carriers will inappropriately be eligible for support as rural carriers, when they should not be.¹⁰²⁶ We do not believe that the potential for manipulation of the federal universal service support mechanism by rural carriers poses the threat that AT&T and MCI suggest; to the contrary, the study area waiver process provides the Commission with oversight over the creation, division,

¹⁰²² CenturyTel *Further Inputs Notice* comments at 3-4; Commonwealth Telephone Company (Commonwealth) *Further Inputs Notice* comments at 4-5; GTE *Further Inputs Notice* comments at 92-93; USTA *Further Inputs Notice* comments at 7; USTA *Further Inputs Notice* reply comments at 4-5; Vitelco *Further Inputs Notice* comments at 8; Vitelco *Further Inputs Notice* reply comments at 1-4.

¹⁰²³ AT&T/MCI *Inputs Further Notice* comments at 42.

¹⁰²⁴ Citizens Utilities *Further Inputs Notice* comments at 3-5; RTC *Further Inputs Notice* comments at 9-11; RTC *Further Inputs Notice* reply comments at 2; TXU *Further Inputs Notice* reply comments.

¹⁰²⁵ Citizens Utilities *Further Inputs Notice* comments at 3-5; RTC *Further Inputs Notice* comments at 9-11; RTC *Further Inputs Notice* reply comments at 2; TXU *Further Inputs Notice* reply comments.

¹⁰²⁶ See AT&T/MCI *Inputs Further Notice* comments at 42.

and combination of study areas.¹⁰²⁷

454. On the other hand, if a carrier should be operating within multiple study areas, we see no basis for interpreting the term "local exchange operating entity" in a manner that would ignore the legal entity responsible for the provision of services by designating a subunit of the legal entity as the local exchange operating entity for a particular study area. Rather, it is more reasonable to have the term local exchange operating entity be synonymous with the corporate entity bearing legal responsibility for the services provided.¹⁰²⁸

455. Although we adopt Citizen Utilities' interpretation of "local exchange operating entity," we reject its proposed interpretation of criterion (C). Citizens Utilities proposes that a local exchange carrier operating entity be considered a rural carrier for each of its study areas, regardless of whether those study areas have fewer than 100,000 access lines, if any single study area in which it operates contains fewer than 100,000 access lines.¹⁰²⁹ Under this interpretation, which only Citizens Utilities supports, an incumbent LEC offering service to a significant portion of a state, including major urban areas, could be certified as a rural carrier for all study areas that it serves within the state if it merely has one outlying study area with less than 100,000 access lines. We find this interpretation to be inconsistent with the statutory language that an entity is an rural telephone company only "to the extent" that it serves a study area with fewer than 100,000 lines. Essentially, Citizens Utilities' interpretation would read that limiting language out of section 153(37). The effect of such a reading would be to permit some of the largest LECs in the nation to claim rural status for all of their study areas if they happen to serve a rural study area within in the state. Such an interpretation would undermine not only the Commission's universal service support mechanisms, but also the fundamental procompetitive policies underlying the 1996 Act.¹⁰³⁰ We do not believe that this could be what Congress intended when it specified that carriers would be deemed rural telephone companies "to the extent" that they satisfied the various criteria, including criterion (C) pertaining to serving study areas with less than 100,000 access lines. Accordingly, consistent with the language of the statutory provision, its purpose, and its context in the Act, we adopt the interpretation that a LEC may be properly considered a

¹⁰²⁷ Study areas have been "frozen" since November 15, 1984, except where a waiver has been obtained. 47 C.F.R. § 36 (App.) (defining "study area").

¹⁰²⁸ We further note that it appears that some carriers with multiple study areas within a state will have a separate corporate entity for each study area. As a result, for these carriers there would be little practical difference between the first interpretation and the one that we adopt.

¹⁰²⁹ Citizens Utilities *Further Inputs Notice* comments at 6.

¹⁰³⁰ For example, if a carrier with more than one study area could claim that it was rural because one of its study areas served less than 100,000 lines, it could, under Citizen Utilities' definition of criterion (C), also claim that it was exempt from the obligations of 251(c) throughout its service territory.

rural carrier with respect to those study areas to which its operating company provides service to fewer than 100,000 access lines. In contrast, a LEC will be deemed a non-rural carrier for study areas serving more than 100,000 access lines unless it satisfies one of the other criteria under section 153(37).

456. We also sought comment in the *Inputs Further Notice* regarding the proper interpretation of "communities of more than 50,000." GTE offers an interpretation of this phrase based on the definition of "rural area" in section 54.5 of the Commission's rules.¹⁰³¹ GTE calculates its percentages of rural and non-rural lines by determining whether each of its wire centers is associated with a metropolitan statistical area (MSA). The lines in each wire center associated with an MSA are considered to be urban, unless the wire center has rural pockets, as defined by the most recent Goldsmith Modification.¹⁰³² The approach suggested by GTE in its comments has merit because it prevents rural treatment of a suburban area adjacent to a census-designated place. At this time, however, there is no information on the record to indicate that this circumstance presents a serious problem in our determination of a carrier's status as a rural or non-rural company. Other commenters addressing the issue support the definition of "communities of more than 50,000" by using Census Bureau statistics for legally incorporated localities, consolidated cities, and census-designated places,¹⁰³³ and some specifically reject the use of the Commission's definition in section 54.5 because of the added complication of its use.¹⁰³⁴

457. Because GTE's approach is more complicated and difficult to administer and because the consequences of the approach would reach only a few, if any, rural carriers' study areas, we decline to adopt GTE's interpretation of "communities of more than 50,000."

¹⁰³¹ GTE *Further Inputs Notice* comments at 94-96. Section 54.5 provides the following definition of rural area:

A "rural area" is a non-metropolitan county or county equivalent, as defined in the Office of Management and Budget's (OMB) Revised Standards for Defining Metropolitan Areas in the 1990s and identifiable from the most recent Metropolitan Statistical Area (MSA) list released by OMB, or any contiguous non-urban Census Tract or Block Numbered Area within an MSA-listed metropolitan county identified in the most recent Goldsmith Modification published by the Office of Rural Health Policy of the U.S. Department of Health and Human Services.

47 C.F.R. § 54.5.

¹⁰³² See 47 C.F.R. § 54.5.

¹⁰³³ CenturyTel *Further Inputs Notice* comments at 7; Citizens Utilities *Further Inputs Notice* comments at 7-8; Commonwealth *Further Inputs Notice* comments at 5.

¹⁰³⁴ Citizens Utilities *Further Inputs Notice* comments at 8; Commonwealth *Further Inputs Notice* comments at 5.

Instead, we now adopt the use of Census Bureau statistics for legally incorporated localities, consolidated, cities, and census-designated places for identifying communities of more than 50,000, as Census Bureau statistics are widely available and may be consistently applied by the Commission. We further require that, when a carrier files for rural certification under criterion (D), it must include in its certifying letter a list of all communities of more than 50,000 to which it provides service, the population of those communities, the number of access lines serving those communities, and the total number of access lines the carrier serves.

3. Identification of Rural Telephone Companies

458. States apply the definition of rural telephone company in determining whether a rural telephone company is entitled to an exemption under section 251(f)(1) of the Act and in determining, under section 214(e)(2) of the Act, whether to designate more than one carrier as an eligible telecommunications carrier in an area served by a rural telephone company.¹⁰³⁵ Although the Commission used the rural telephone company definition to distinguish between rural and non-rural carriers for purposes of calculating universal service support, there is no statutory requirement that it do so. The Commission adopted the Joint Board's recommendation to allow rural carriers to receive support based on embedded costs for at least three years, because, as compared to large LECs, rural carriers generally serve fewer subscribers, serve more sparsely populated areas, and do not generally benefit as much from economies of scale and scope.¹⁰³⁶ The Commission also noted that, for many rural carriers, universal service support provides a large share of the carriers' revenues, and thus, any sudden change in the support mechanisms may disproportionately affect rural carriers' operations.¹⁰³⁷

459. In the *Inputs Further Notice*, we sought comment on whether to reconsider the means of distinguishing rural and non-rural carriers. Commenters generally oppose any reconsideration of our decision to use the definition of rural telephone company to distinguish between rural and non-rural carriers for the purpose of evaluating universal service support on the grounds that changing the definition at this time could disrupt the settled expectations that they have developed.¹⁰³⁸ We agree that we should not change our reliance on the statutory definition of rural telephone company to distinguish between rural and non-rural carriers for universal service purposes. Accordingly, we will leave in place the Commission's decision to

¹⁰³⁵ 47 U.S.C. §§ 214(e)(2), 251(f)(1).

¹⁰³⁶ *Universal Service Order*, 12 FCC Rcd at 8936, para. 294.

¹⁰³⁷ *Universal Service Order*, 12 FCC Rcd at 8936, para. 294.

¹⁰³⁸ CenturyTel *Further Inputs Notice* comments at 6; Commonwealth *Further Inputs Notice* comments at 2; Citizens Utilities *Further Inputs Notice* comments at 3; GTE *Further Inputs Notice* comments at 96-98; RTC *Further Inputs Notice* comments at 15; RTC *Further Inputs Notice* reply comments at 2; TXU *Further Inputs Notice* reply comments at 4; USTA *Further Inputs Notice* comments at 7.

use the definition of rural telephone company in section 153(37) of the Communications Act to distinguish rural telephone companies from non-rural ones.

X. PROCEDURAL MATTERS AND ORDERING CLAUSE

A. Final Regulatory Flexibility Analysis

460. As required by the Regulatory Flexibility Act (RFA),¹⁰³⁹ an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Inputs Further Notice*.¹⁰⁴⁰ The Commission sought written public comment on the proposals in the *Inputs Further Notice*, including comments on the IRFA. The Final Regulatory Flexibility Analysis (FRFA) in this Order conforms to the RFA, as amended.¹⁰⁴¹

461. *Need for and Objectives of This Order.* In the *Universal Service Order*, the Commission adopted a plan for universal service support for rural, insular, and high-cost areas to replace longstanding federal subsidies to incumbent local telephone companies with explicit, competitively neutral federal universal service mechanisms.¹⁰⁴² In doing so, the Commission adopted the recommendation of the Joint Board that an eligible carrier's support should be based upon the forward-looking economic cost of constructing and operating the networks facilities and functions used to provide the services supported by the federal universal service mechanism.

462. In the *Universal Service Order*, the Commission also determined that rural and non-rural carriers will receive federal universal service support determined by separate mechanisms until at least January 1, 2001.¹⁰⁴³ The Commission stated that it would define rural carriers as those carriers that meet the statutory definition of a rural telephone company in section 153(37) of the Communications Act.¹⁰⁴⁴ We have found that carriers self-certifying

¹⁰³⁹ See 5 U.S.C. § 603. The RFA, see 5 U.S.C. § 601 *et seq.*, has been amended by the Contract with America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

¹⁰⁴⁰ *Inputs Further Notice* at paras. 257-271.

¹⁰⁴¹ See 5 U.S.C. § 604.

¹⁰⁴² *Universal Service Order*, 12 FCC Rcd. 8776.

¹⁰⁴³ *Id.* at 8927, para. 273.

¹⁰⁴⁴ See 47 U.S.C. § 153(37); *Universal Service Order*, 12 FCC Rcd at 8944, para. 310.

as rural have not always applied section 153(37) uniformly.¹⁰⁴⁵ In section IX of this Order, we clarify our interpretation of section 153(37). We also address the possibility that our annual self-certification requirements may be modified or eliminated in order to reduce the reporting burden on filing entities.

463. Our plan to adopt a mechanism to estimate forward-looking costs for larger, non-rural carriers has proceeded in two stages. On October 28, 1998, the Commission completed the first stage of this proceeding: the selection of the model platform. The platform encompasses the aspects of the model that are essentially fixed, primarily assumptions about the design of the network and network engineering. In this Order, we complete the second stage of this proceeding, by selecting input values for the cost model, such as the cost of cables, switches and other network components, in addition to various capital cost parameters.

464. *Summary and Analysis of the Significant Issues Raised by Public Comments in Response to the IRFA.* No comments were received specifically in response to the IRFA. We received several comments, however, addressing concerns that may affect small entities. These comments universally supported our proposal, adopted in this Order,¹⁰⁴⁶ to reduce the burden of carriers self-certifying as rural by eliminating the annual filing requirement.

465. *Description and Estimate of the Number of Small Entities to which the Order will Apply.* The RFA generally defines "small entity" as having the same meaning as the term "small business," "small organization," and "small government jurisdiction."¹⁰⁴⁷ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act, unless the Commission has developed one or more definitions that are appropriate to its activities.¹⁰⁴⁸ Under the Small Business Act, a "small business concern" is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the SBA.¹⁰⁴⁹ The SBA has

¹⁰⁴⁵ See *Inputs Further Notice* at para. 249.

¹⁰⁴⁶ See section IX, above.

¹⁰⁴⁷ 5 U.S.C. § 601(6).

¹⁰⁴⁸ 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 5 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition in the Federal Register."

¹⁰⁴⁹ 15 U.S.C. § 632. See, e.g., *Brown Transport Truckload, Inc. v. Southern Wipers, Inc.*, 176 B.R. 82 (N.D. Ga. 1994).

defined a small business for Standard Industrial Classification (SIC) category 4813 (Telephone Communications, Except Radiotelephone) to be small entities when they have no more than 1,500 employees.¹⁰⁵⁰

466. We have included small incumbent LECs in this present RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation."¹⁰⁵¹ The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope.¹⁰⁵² We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

467. Local Exchange Carriers. Neither the Commission nor SBA has developed a definition of small providers specifically directed toward LECs. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of LECs nationwide of which we are aware appears to be the data that we collect annually in connection with the Telecommunications Relay Service (TRS).¹⁰⁵³ According to our most recent data, 1,410 companies reported that they were engaged in the provision of local exchange service as incumbents.¹⁰⁵⁴ Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of LECs that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,410 small entity LECs that may be affected by this Order. We also note that, with the exception of our clarification of the definition of rural carrier under section 153(37) and the modification of reporting requirements, the rules adopted by this Order apply

¹⁰⁵⁰ 13 C.F.R. § 121.201.

¹⁰⁵¹ 5 U.S.C. § 601(3).

¹⁰⁵² Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of "small business concern," which the RFA incorporates into its own definition of "small business." See 15 U.S.C. § 632(a) (Small Business Act); 5 U.S.C. § 601(3) (RFA). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. 13 C.F.R. § 121.102(b). Since 1996, out of an abundance of caution, the Commission has included small incumbent LECs in its regulatory flexibility analyses. *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket, 96-98, First Report and Order, 11 FCC Rcd 15499, 16144-45 (1996).

¹⁰⁵³ See 47 C.F.R. § 64.601 *et seq.*

¹⁰⁵⁴ FCC, *Carrier Locator: Interstate Service Providers*, at Figure 1 (Jan. 1999).

only to larger, non-rural LECs.

468. *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements.* This Order imposes no new reporting, recordkeeping, or other compliance requirements. As discussed more fully in section IX, above, this Order immediately eliminates the requirement that carriers serving study areas with fewer than 100,000 access lines must annually file letters certifying themselves as rural carriers in order to remain in the rural carrier universal service support mechanism. Further, this Order eliminates, after the July 1, 2000, filing deadline, the requirement that rural carriers serving study areas with more than 100,000 access lines must file annual self-certification letters. All rural carriers must, however, notify the Commission in the event of a change in rural status.

469. The overall effect of this Order will be to reduce reporting, recordkeeping, and other compliance requirements for small entities.¹⁰⁵⁵ This benefit will apply to all carriers deemed rural under section 153(37), regardless of whether they are a small or large entity. Carriers serving study areas with fewer than 100,000 access lines--which are more likely to be small entities than those serving study areas with more than 100,000 access lines--will be most immediately benefited, as no further filings will be required of them unless and until their rural status changes. The largest carriers will generally be non-rural and not affected by this change in reporting. To the extent that large and small entities are treated differently, therefore, small entities will not carry a disproportionately high cost of compliance.

470. *Steps Taken to Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered.* As noted above and discussed more fully in section IX, with respect to reporting requirements affecting small entities, we eliminate the burden of an annual filing requirement for rural carriers. For carriers serving study areas with fewer than 100,000 access lines, this change is effective immediately. Rural carriers serving study areas with more than 100,000 access lines will be required to file a self-certification letter by July 1, 2000, but will not be required to refile additional annual certifications unless their status changes. These changes have at their heart consideration of the resources of small entities, and will reduce, if not eliminate, the costs of compliance for small entities. The alternative to this approach would have been to require additional unnecessary self-certification letters from the vast majority of filing carriers, even though the data supporting those self-certifications are easily verified by publicly available documentation.¹⁰⁵⁶ The other changes to Commission rules that we adopt in this Order affect only larger, non-rural LECs, and should have no direct affect on small entities.

471. *Report to Congress.* The Commission will send a copy of this Order, including

¹⁰⁵⁵ See para. 447, *supra*.

¹⁰⁵⁶ See para. 447, *supra*.

this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996.¹⁰⁵⁷ In addition, the Commission will send a copy of the this Order, including FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of this Order and FRFA (or summaries thereof) will also be published in the Federal Register.¹⁰⁵⁸

B. Paperwork Reduction Act Analysis

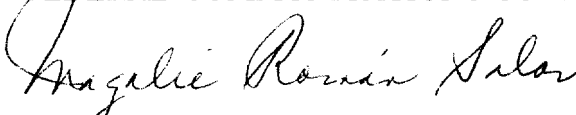
472. The decision herein has been analyzed with respect to the Paperwork Reduction Act of 1995, Pub. L. 104-13, and has been approved in accordance with the provisions of that Act. On August 4, 1999, the Office of Management and Budget approved the proposed requirements contained in the *Inputs Further Notice* under OMB control number 3060-0793.

C. Ordering Clauses

473. IT IS ORDERED, pursuant to Sections 1, 4(i) and (j), 201-209, 218-222, 254, and 403 of the Communications Act, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 201-209, 218-222, 254, and 403 that this Report and Order IS HEREBY ADOPTED.

474. IT IS FURTHER ORDERED that the Commission's Office of Public Affairs, Reference Operations Division, SHALL SEND a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION



Magalie Roman Salas
Secretary

¹⁰⁵⁷ See 5 U.S.C. § 801(a)(1)(A).

¹⁰⁵⁸ See 5 U.S.C. § 604(b).